



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Industrial Pump and Compressor, Inc.--
Request for Reconsideration
File: B-229975.2
Date: February 10, 1988

DIGEST

1. While a protester's communication to a contracting agency does not have to explicitly state that it is intended as a protest for it to be considered so, a mere request for clarification does not constitute a formal protest.
2. An agency's consideration of an untimely agency-level protest does not preclude the General Accounting Office (GAO) from dismissing an untimely protest even if the protest to GAO was filed within 10 days of the protester's notice of the denial of the agency-level protest.

DECISION

Industrial Pump and Compressor, Inc. (IPCO) requests that we reconsider our January 12, 1988 dismissal as untimely of IPCO's protest regarding the award of a contract under solicitation No. F41608-87-R-2101 by the Air Force. In its request for reconsideration, IPCO argues that it was timely in filing protests both with the Air Force and with us.

We affirm the dismissal.

The Air Force awarded the contract on September 30, 1987. In a letter to the Air Force dated October 5, 1987, IPCO protested the award because the Air Force failed to address IPCO's requests for clarification of certain elements in the solicitation. The Air Force denied the October 5 protest by letter dated December 28, 1987. That letter was apparently received by IPCO on January 6, 1988. IPCO filed a protest in our Office on January 12, 1988.

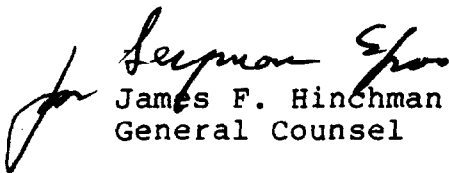
We dismissed IPCO's protest because it was based on alleged improprieties in the solicitation and was not filed prior to the initial closing date for the receipt of proposals,

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August 24, 1987, as required by 4 C.F.R. § 21.2(a)(1) (1987). IPCO now alleges that it did in fact file a protest with the Air Force prior to the closing date for the receipt of proposals. A copy of the "protest" to which IPCO refers was attached to the original protest filed with us, and consisted of a two sentence telegram set by IPCO to the Air Force 3 days prior to the closing date. That telegram sought clarification of certain elements of the solicitation in the form of answers to the questions it had previously sent to the Air Force. We do not agree that the telegram can reasonably be construed to be a protest. While a communication does not have to explicitly state that it is intended as a protest for it to be considered so, a mere request for clarification, such as IPCO's telegram, does not constitute a formal protest. See Triple A Shipyards, B-213433, Apr. 6, 1984, 84-1 CPD ¶ 385.

IPCO's October 5, 1987 protest to the Air Force was also untimely since it concerned the same alleged solicitation improprieties. The fact that the Air Force denied the protest on the merits does not preclude us from dismissing as untimely the protest that was subsequently filed with us within 10 days of IPCO's receipt of the Air Force denial, since our rules require that in such circumstances the original protest to the agency be timely. See 4 C.F.R. § 21.2(a)(3).

The dismissal is affirmed.


James F. Hinchman
General Counsel